IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRL.A.No. 2180 of 2004()

SC.185/2001 of THE ADDL. SESSIONS JUDGE, FAST TRACK COURT NO.1, ADHOC MANJERI IN SC.185/01

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APPELLANT: ACCUSED NO.1:

CHOLAKKAL PARANGODATH ALAVI,
SON OF KUNHEEDU, CHINAKKAL, VALIORA AMSOM
VENGARA, MALAPPURAM DISTRICT.

BY ADV. SRI.M.P.M.ASLAM.

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, BY CIRCLE INSPECTOR
OF POLICE, MALAPPURAM REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, ALONG WITH CRA NO. 2135 OF 2005 & CRRP NO. 442 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

Crl.A.NO.2180 OF 20O4,
CRL.A.NO.2135 OF 2005
&
CRL.R.P.No. 442 of 2005

Dated this the 1st day of November, 2007

JUDGMENT

Koshy, J.

Three persons were charge sheeted for the offences punishable under Sections 302, 120(b) and 201 IPC read with Section 34 IPC. Second accused absconded and his case has been split up. Accused 1 and 3 faced trial. Third accused was acquitted. First accused was sentenced to undergo imprisonment for life and to pay fine of Rs.50,000/- under Section 302 IPC. Against the conviction and sentence, the first accused filed Crl.A.No.2180 of 2004. Against the acquittal of the third respondent, the State filed Crl.A.No.2135 of 2005. Defacto complainant, PW2 filed Crl.R.P.No. 442 of 2005 for the same reason.

2. According to prosecution, all the three accused, due to their previous enmity towards the deceased Ahammed Munshi, entered into a conspiracy among themselves and in furtherance of their common intention to commit murder, accused 1 and 2 reached at

Puthanathani Vengara road at about 9.30 am on 6.4.1999 and the first accused had struck twice on the head of the victim with a stick and they chased him and from the courtyard of his sister's house both of them inflicted stab injuries repeatedly on the chest and back of chest with dagger and knife respectively held by accused 1 and 2 and they escaped from the scene with the help of third accused who brought an auto rickshaw to carry them after the incident, as per the conspiracy hatched and therefore all the accused are liable to be convicted under the above charge.

3. The prosecution mainly relied on the evidence of PW1 to PW3, who are eye witnesses. Exhibit P1 is the first information statement given after the incident on the same day at 11.30 AM without leaving any time for deliberation or manipulation. On the basis of the above, Exhibit P17 FIR was registered, which shows that FIR was registered at 5.20 pm on the very same day. FI statement was given by PW1, who is an eye witness. He deposed that on 6.4.1999 at about 9.30 pm, while he was talking with the deceased Ahammed Munshi regarding the work to be done in the property of the deceased, accused 1 and 2 came there and second accused took a stick from his shirt and beat on the head of the deceased Ahammed Munshi. Munshi ran away escaping to the compound of his sister Pathumma. Accused 1 and 2 followed him and second

accused stabbed Ahammed Munshi with a knife held by him. Munshi ran to the back side of the house of Pathumma and fell near a well. When PW1 reached near the deceased Ahammed Munshi, he was unable to talk. He asked a person who was conducting tea shop to call a jeep and in the jeep Ahammed Munshi was taken to the hospital by the people gathered including sons of deceased Ahammed Munshi. On reaching the M.K.Hospital, Thirurangadi, doctor stated that the injured died. Thereafter the body was kept in the government hospital. The incident occurred after 9.30 am and the matter was reported to the police station at 11.30 am, immediately after keeping the dead body in the government hospital. PW1 gave oral evidence before the court which is similar to the statement given in Exhibit P1. Even though he was cross-examined, nothing was stated in favour of the accused. His evidence as a whole seems to be trustworthy and there is no case for the accused that he was in any way inimical to them. His evidence is supported by evidence of PW2 and PW3 who are also eye witnesses.

4. PW14 conducted postmortem and issued Exhibit P11 postmortem certificate and the following antemortem injuries were found in the dead body:

> "1.Incised penetrating wound, with skin part 3.5 x 2 cm, transverse, over left side of neck, with inner rounded end at root 4.5cm outer to midline, coursing

upwards, outwards and back wards for 4 cm cutting the muscles, nerves and vessels - other end being sharpcut and tailing transversely outwards for 1 cm.

2. Incised penetrating wound, with skin part 2.5 x 1 cm, vertical over outer aspect of right thigh with upper rounded end 9 cm below top of hip bone, coursing upwards, inwards and frontwards for 4 cm cutting muscles, nerve and vessels to end in tissues place other end being sharpcut.

3. Incised wound, 1 x 0.3 x 0.8 cm, and transverse as transverse extention from center of back edge of injury No.2.

4. Incised wound 5 x 2 x 1 cm, transverse, over outer aspect of right thigh, with front end 7 cm below injury No.2 at 7 O'clock position.

5. Incised wound, 1 x 0.3 x 0.8 cm, transverse, front of right thigh 4.5 cm below groin line.

6. Incised penetrating wound with skin part 6 x 2 cm, vertical, over outer aspect of left upper arm, with ends sharpcut, with upper end 9 cm below shoulder tip, coursing inwards, upwards and backwards for 8 cm cutting muscles, nerves and vessels.

7. Lacerated wound 4 x 0.5 x 0.5 cm, oblique over left side of top of head with lower inner end on forehead, 1 cm outer to midline and 6 cm above eyebrow.

8. Multiple contused abrasions, 0.1 x 0.1 cm to 1 x 0.3 cm (vertical) irregularly and sparsely scattered over inner vertical 1/4th of left half of forehead.

9. Lacerated wound 2 x 0.5 x 0.5 cm transverse over lefet side of back of head, over occiput, 1 cm outer to midline.

> 10. Incised penetrating wound, with skin part 3.5 x 2cm, transverse, over left side of back of chest with inner rounded end 7 cm outer over left side of back of chest with inner rounded end 7 cm ourt to midline and 11 cm below shoulder top coursing downwards inwards and front wards for 7 cm cutting the muscles, nerves and vessels to open into left chest cavity cutting 7th intercostals space and pleura along the course of wound. The other end sharpcut and tailing transversely for 0.3 cm outwards. The central part of back aspect of lower lobe of left lung showed an incised penetrating would 2 x 0.5 x 3 cm. Left lung (250 g) collapsed. 200G reddish clotted blood and 1000 cc reddish fluid blood in left chest cavity. Right lung (330g). Heart (300g) and mediastinum pale.
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> 11. Incised penetrating wound with skin part 3 x 2 cm, oblique, on left side of back of chest, with upper inner rounded end 7 cm vertically below outer end of injury No.10, coursing inwards, downwards and forwards for 5 cm to end in tissue plane, cutting muscles, nerves and vessels, other end sharp cut."

Exhibit P11 postmortem certificate shows that injury No.10 over the left side of back of chest is fatal injury. PW14 also stated that all other injuries, except injury No.8, were grave injuries. PW14 also stated that his injuries could be caused with MO1 to MO3 weapons.

5. The evidence of PW1 to PW3 shows that his injuries are caused by joint effort of accused 1 and 2. At the disclosure of the first accused, MO1 knife was found out which shows that he knew the place where the alleged weapon was concealed and his evidence is admissible under Section 27 of the Evidence Act. He also referred to the chemical examination report which also shows that the knife,

recovered at the instance of the first accused, was stained with human blood. Therefore, recovery of the alleged weapon is stained with blood corroborates the evidence of PW1 to PW3. In the face of this clear and cogent evidence, conviction of the first accused under Section 302 IPC needs no interference. It has come out in evidence that accused 1 and 2, in furtherance of their common intention to murder the deceased Ahammed Munshi, beaten on the head of the deceased and the deceased ran away to the compound of sister's house and accused 1 and 2 followed and inflicted fatal injuries on the deceased. Only lesser sentence of life imprisonment under Section 302 was imposed and therefore, conviction and sentence imposed on the first accused cannot be set aside and we find no merit in the appeal. Therefore, Crl.A.No.2180 of 2004 is dismissed.

6. With regard to acquittal of third accused, the only allegation against the third accused was that PW2 deposed that while he was returning after giving milk to the hotel, he saw an auto rickshaw driven by the third accused parked there without switching off the engine and accused 1 and 2 talked something to third accused. So, even if accused 1 and 2 talked something to third accused, that cannot mean that there is any criminal conspiracy with the third accused. PW3, a chance witness, who happens to be there to meet somebody, stated that he saw an auto rickshaw parked without

switching off the engine near the well at the road side and accused 1 and 2 entering the auto rickshaw with the weapons and immediately escaped in into the auto rickshaw driven by the third accused. Third accused is not hailing from the place of occurrence and there is no evidence to show that there was any criminal conspiracy with the third accused. Even if PW3 can be believed on this aspect and accused 1 and 2 escaped in an auto rickshaw, that will not make any criminal conspiracy. Talk of accused 1 and 2 with the third accused auto driver also cannot amount to conspiracy. At the maximum evidence of PW2 and PW3 show that accused 1 and 2 came with an auto driven by third accused and asked him to wait and they will come back soon. When they came back, they returned in the auto. There is no case that PW3 has anything to do with the deceased or he is involved in any criminal conspiracy with accused 1 and 2 to do away with the deceased. Therefore, the trial Judge acquitted the third accused. It cannot be stated that the above finding is so perverse and that no reasonable person will enter into such finding. An order of acquittal can be interfered by the appellate court only if the findings are perverse or there is patent illegality or irregularity. There is no patent illegality or irregularity in interfering in the appeal filed against the acquittal of third accused. The view taken by the trial Judge is a plausible view. Hence, Crl.A.No.2135 of 2005 and

Crl.R.P.No.442 of 2005 are also liable to be dismissed. We do so. We make it clear that the appellants will be entitled to set off the period of imprisonment they have already undergone as provided under Section 428 Cr.P.C if the State Government commits the sentence for life. The Criminal Appeals and Criminal Revision petition are dismissed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

Crl.A.NO.2180 OF 20O4,
CRL.A.NO.2135 OF 2005
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JUDGMENT

1.11.2007